IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

OP.No. 14069 of 2001(Y)

PETITIONER:

P.B. YASODHARAN, AGED 54 YEARS,
S/O. BALAKRISHNAN,
PUTHUVALSTALATHU HOUSE,
PANAMBUKADU, VALLARPADOM.P.O.,
ERNAKULAM DISTRICT.

BY ADV. SMT.DAISY THAMPI.

RESPONDENTS:
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1. **THE CHIEF CONSERVATOR OF FORESTS (ADMINISTRATION), FOREST HEAD QUARTERS, THIRUVANANTHAPURAM.**

2. **THE CONSERVATOR OF FOREST, HIGH RANGE CIRCLE, KOTTAYAM.**

3. **THE DIVISIONAL FOREST OFFICER, FLYING SQUAD, KOTHAMANGALAM.**

BY GOVERNMENT PLEADER SMT. K.R. DEEPA.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 15/02/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 22395/2001 IN O.P. NO. 14069/2001

DISMISSED

15/02/2007. **SD/- KURIAN JOSEPH, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE SERVICE ORDER NO. 3/85.

EXT.P.2: COPY OF THE ORDER NO. 68/91 DTD. 09/11/1999.

EXT.P.3: COPY OF THE ORDER NO. M2.1852/2000 DTD. 25/05/2000 ISSUED BY THE R.3.

EXT.P.4: COPY OF THE ORDER NO. K-2/2001 DTD. 26/02/2001.

EXT.P.5: COPY OF THE REPRESENTATION DTD. 13/03/2001.

EXT.P.6: COPY OF THE ORDER DTD. 09/04/2001.

EXT.P.7: COPY OF THE RELEVANT EXTRACT OF THE PROVISIONAL SENIORITY LIST PUBLISHED BY THE R.2. ON 01/01/98.

//TRUE COPY//

prv.

KURIAN JOSEPH, J.

O.P.No.14069 of 2001

Dated 15th February, 2007.

J U D G M E N T

Petitioner is aggrieved by the recovery steps initiated for recovering the alleged excess payments given to him counting his service as Watcher, for the purpose of fixation of higher grade in the post of Guard. The contention taken by the Department is that the post of Watcher is not in the feeder category for promotion to the post of Guard and hence the service rendered by him in the post of Watcher cannot be counted for the purpose of promotion to the post of Guard. Learned counsel for the petitioner submits that in view of Ext.R3(a) proceedings, giving retrospective effect to the appointment to the post of Guard, the alleged recovery will not be necessary at all since the petitioner would be otherwise completing 10 years as on the date of retrospective appointment. It is now settled law that even if the appointment is only on notional basis for the purpose of grade fixation, the stagnation being the principle, such service also will have to be counted. It is also submitted that the petitioner has retired from service on 31.12.2001. Therefore, it is made clear

that any recovery shall be made only if it is found necessary after working out the fixation benefits by way of grade, counting the total service in the post of Guard reckoned with effect from 14.1.1990 as granted in Ext.R3(a). In the event of such steps being taken, the petitioner shall be afforded an opportunity for hearing.

The writ petition is disposed of as above.

KURIAN JOSEPH, JUDGE.

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KURIAN JOSEPH, J

O.P.No.14069 of 2001 (Y)

J U D G M E N T

Dated 15th February, 2007.